STATE OF MICHIGAN
IN THE SUPREME COURT

DONA REGAN and BRIAN REGAN,

Plaintiffs-Appellees,

v

WASHTENAW COUNTY BOARD OF COUNTY ROAD COMMISSIONERS,

Defendant-Appellant,

and

DAVID CAVANAUGH,

Defendant.

FOR PUBLICATION
June 10, 2003
9:05 a.m.

No. 219761
Washtenaw Circuit Court
LC No. 97-004017-NI

ON REMAND

LEONARD ZELANKO,

Plaintiff-Appellee,

v

WASHTENAW COUNTY BOARD OF COUNTY ROAD COMMISSIONERS,

Defendant-Appellant,

and

RICHARD LEE SHEHAN,

Defendant.

No. 220532
Washtenaw Circuit Court
LC No. 98-009848-CZ

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APPLICATION FOR LEAVE TO APPEAL ON BEHALF OF DEFENDANT WASHTENAW COUNTY ROAD COMMISSION

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INTRODUCTION

Defendant, Washtenaw County Road Commission, makes this Application for Leave to Appeal pursuant to MCR 7.301(A)(2) as follows:

A. The Judgment Appealed From and the Relief Sought

This matter returns to the Supreme Court following a June 10, 2003 decision of the Court of Appeals after remand from this Court. In these consolidated cases, the plaintiffs have brought suit against the Road Commission claiming injuries resulting from accidents involving, in Regan, a broom tractor that was in the process of sweeping a roadway, and in Zelanko, a tractor/mower that was cutting grass next to the highway. Defendants moved for summary disposition in both cases claiming governmental immunity. Plaintiffs in both cases claimed the motor vehicle exception to governmental immunity. The circuit court denied summary disposition in both cases (Exhibit A), and the Court of Appeals granted leave in both. The cases were then consolidated, and the Court of Appeals held that both came within the Motor Vehicle Exception (Exhibit B).

Defendant applied for leave to appeal to this Court. In lieu of granting leave, the Supreme Court remanded the cases with instruction to the Court of Appeals that it reconsider in light of Stanton v City of Battle Creek, 466 Mich 611; 647 NW2d 508 (2002) and Chandler v Muskegon Co, 467 Mich 315; 652 NW2d 224 (2002) (Exhibit C). In his decision on remand, Judge Murphy, joined by Judge Griffin, concluded that the broom tractor and the mower are "motor vehicles" under MCL 6.91.1405, and that both were being operated as motor vehicles at the times of the accidents (Exhibit D).

Judge Wilder dissented. He concluded that neither the broom tractor nor the tractor/mower are motor vehicles within the meaning of Stanton. He concluded, as well, that neither was being operated as a motor vehicle within the meaning of Chandler.

Defendant now appeals from the Court of Appeals decision on remand. Judges Murphy and Griffin are clearly wrong in their interpretation and application of Chandler and Stanton to the facts in

Defendant now appeals from the Court of Appeals decision on remand. Judges Murphy and Griffin are clearly wrong in their interpretation and application of Chandler and Stanton to the facts in these cases. Judge Wilder's analysis is the correct one, and this Court must grant leave to appeal and reverse for the correct result in this case, and to preserve the law as the Court announced it in the Chandler and Stanton cases.

B. The questions presented for review

I. WHETHER THE BROOM TRACTOR IS A "MOTOR VEHICLE" WITHIN THE MEANING OF STANTON?

Plaintiff says, "yes."

Judges Murphy and Griffin say, "yes."

Judge Wilder says, "no."

Defendant says, "no."

II. WHETHER THE BROOM TRACTOR WAS BEING OPERATED AS A MOTOR VEHICLE WITHIN THE MEANING OF CHANDLER?

Plaintiff says, "yes."

Judges Murphy and Griffin say, "yes."

Judge Wilder says, "no."

Defendant says, "no."

III. WHETHER THE TRACTOR/MOWER IS A "MOTOR VEHICLE" WITHIN THE MEANING OF STANTON?

Plaintiff says, "yes."

Judges Murphy and Griffin say, "yes."

Judge Wilder says, "no."

Defendant says, "no."

IV. WHETHER THE TRACTOR/MOWER WAS BEING OPERATED AS A MOTOR VEHICLE WITHIN THE MEANING OF CHANDLER?

Plaintiff says, "yes."

Judges Murphy and Griffin say, "yes."

Judge Wilder says, "no."

Defendant says, "no."

C. Grounds for this Application

This Application is warranted by three of the grounds stated in MCR 7.302(B). The issues have significant public interest, and the case is against an agency or subdivision of the State. Second, the issues involve legal principles of major significance to the State's jurisprudence. Third, the decision by Judges Murphy and Griffin is clearly erroneous and will cause material injustice. Indeed, while Judge Murphy did his best, in a wholly argumentative fashion, to distinguish these cases from Stanton and Chandler, he makes distinctions without any difference. Consequently, his decision conflicts with the Supreme Court decisions.

The Supreme Court instructed the Court of Appeals to reconsider these cases in light of Chandler and Stanton. The Supreme Court had turned in those cases to dictionary definitions to construe the meaning of certain ordinary terms; in one the meaning of "motor vehicle", and in the other the meaning of "operation". Judge Murphys' attitude concerning the task to which he was directed by the Supreme Court's remand order, and indeed concerning the Supreme Court decisions themselves, is amply demonstrated by his footnote 6. His observations there are, at best, somewhat quizzical about the Supreme Court's analysis employing dictionary definitions. They are, at worst, overtly sarcastic.

Judge Wilder's dissent concludes that neither of these tractors are "motor vehicles" as that term is defined by Stanton. Neither was being operated as a motor vehicle as "operation of a motor vehicle" is defined by this Court in Chandler.

In Chandler and Stanton, the Supreme Court construed the Motor Vehicle Exception narrowly in the manner long employed by the Court. Judge Murphy has now, in this published decision on remand, construed Stanton and Chandler so as to give the Motor Vehicle Exception a broadly encompassing sort of interpretation. Judge Murphy's reading of Chandler and Stanton relegates those decisions to mere footnotes for interpreting the Motor Vehicle Exception. His published decision, if it stands, will make the Motor Vehicle Exception inclusive of any machine with a motor and wheels, with an on board operator, if it is moving and performing work anywhere near a roadway. He explains the Stanton decision merely as one involving a forklift that is a piece of "equipment." According to Judge Murphy, Stanton applies to almost no other situation. According to Judge Murphy, Chandler does not apply in any case where a "motor vehicle", under his broad definition, is moving.

Moreover, by publication of their decision, Judges Murphy and Griffin have so narrowly construed Stanton and Chandler as to make them almost irrelevant, but their reasoning is categorically wrong. Judge Murphy writes that the wholly specialized tractors in these cases are similar "conveyances" to automobiles, trucks, and busses. That analysis is so superficial, and is such gross rationalizing to reach the result that he desires, that a child could likely point out how he is wrong. The broom tractor and the tractor/mower are entirely dissimilar to automobiles, trucks, and busses. They are not "similar conveyances" at all. They have no purpose to convey things or people. To the extent that an operator is aboard each tractor, that is only to operate the tractor and not to convey the operator. Further, neither of these tractors can operate at highway speeds, nor are they intended to be operated on the highway like an automobile, truck, or bus. Very simply, neither has a purpose similar to an automobile, truck, or bus.

Judge Murphy has also clearly erred in his shallow analysis of "operation of a motor vehicle." As this Court says in Chandler, even a motor vehicle must be operated "*as*" a motor vehicle in order to come within the exception. If a motor vehicle is being used for some other purpose than roadway driving in the manner of an automobile, truck, or bus, it is not being "operated as a motor vehicle." Neither tractor in

these cases was being operated "as a motor vehicle." One was mowing grass alongside the highway. The other was sweeping dirt off the roadway. Neither was fulfilling the conveyance purpose of an automobile, truck, or bus.

In summary, the Supreme Court must grant this Application for Leave to Appeal. The Court of Appeals majority's decision represents a somewhat audacious attempt to nullify the Supreme Court's interpretation of the Motor Vehicle Exception and to substitute, in its place, Judges Murphy's and Griffin's expansive interpretation of it. The Supreme Court should grant this Application, and it should do so as soon as possible since so many cases currently hang in the balance.

STATEMENT OF FACTS

A. The facts in the Regan case

This lawsuit arose out of a collision between a Washtenaw County Road Commission tractor, which was being operated by defendant David Cavanaugh, and a motor vehicle operated by the plaintiff, on US-12 (between Saline and Clinton) on May 16, 1995. (Ex. A2).

On May 16, 1995, several Road Commission employees, including defendant David Cavanaugh, were involved in a shoulder maintenance operation on US-12 (Michigan Avenue). (Ex. B, dep of David Cavanaugh, p. 11). At the time of the accident, the crew was working on the north shoulder of US-12, moving in a westbound direction . (Ex. C, dep of Rodney Naebeck, p. 6). There were five vehicles in the caravan. A grader was the first vehicle in the procession. A heavy truck with a blade came second. The broom tractor, operated by David Cavanaugh, was the third in line (see photo, Exhibit E attached hereto, copy attached to Plaintiff's Supplemental Brief on Remand). The fourth vehicle was a roller, and it was followed by a pickup truck which was carrying a lighted arrow board. (Ex. C, p. 6). In addition to the vehicles described above, a pickup truck was used to move the stationary signs, which read "Road Work Ahead." (Ex. B, pp. 21-23).

Dona Regan was a full time bus driver for Clinton Schools. Ex. E, dep of Dona Regan, p. 16). She also worked as a manager at the McDonald's Restaurant in Saline. (Ex. E, p. 21). Her work schedule that day included driving a school bus first, after which she drove to the McDonald's Restaurant in Saline to work for a few hours. Following the work at McDonald's, she returned to Clinton Schools to drive the bus again for a noontime run. She then returned to McDonald's to work for a few more hours. Finally, she left McDonald's and drove back to Clinton Schools for her final bus run. Each time she drove

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2 The defendant submitted numerous exhibits with its motion in the Circuit Court. This Statement of Facts makes reference to the exhibits in the same manner as they are referenced in the motion. The exhibits are of record for the purpose of this appeal, having been docketed with the November 19, 1998, Motion for Summary Disposition.

between her two places of employment, she took US-12. In other words, at the time of the accident she was driving on US-12 for her fourth time that day. (Ex. E, pp. 41-42, 43-45).

The weather conditions on that particular day were hot and dry, with gusty winds. (Ex. C, plaintiffs' Complaint, Paragraph 3). When she drove to McDonald's in the morning, she was not enveloped by any dust clouds. (Ex. E, p. 58-59). When she drove back to the bus yard around the noon hour, she did not see any dust clouds. (Ex. E. pp. 60-61). When she made her return trip to McDonald's after finishing her noon hour bus run, she did not seen any dust clouds. (Ex. E, p. 61).

On her second trip to McDonald's described in subparagraph j, she observed Washtenaw County Road Commission vehicles moving eastbound on US-12 working on the south shoulder. (Ex E, p. 61). As she was heading back to McDonald's for the second time, she could feel the gusting winds. Notwithstanding those winds, she had no trouble keeping control of her vehicle as she was heading eastbound on US-12 toward Saline. (Ex. E, p. 65). The plaintiff was heading westbound toward Clinton on US-12 when this accident happened. (Ex. E, p. 46). In the course of her westbound travel, she observed road signs telling her that there was a work crew ahead. (Ex. E, p. 50). She testified that she had no trouble reading the message. (Ex. E, p. 51). She testified that she slowed to approximately 18 - 24 miles per hour (Ex. E. p. 52) when she was about one-quarter mile from the broom tractor. (Ex. E, p. 52). As she came approximately two van lengths away from the tractor, she was enveloped by a dust cloud. (Ex. E, p. 66). Up to that point, there had been no dust clouds. (Ex. E, p. 68), and before that dust cloud came up, she had no trouble seeing the tractor. (Ex. E. p. 69). In her own words:

"It was instantaneous. It was a sand-out, I guess you would call it. It was like a curtain or somebody put a bag over your head. You couldn't see anything. Dense fog was better to see than this." (Ex. E, p. 69).

The plaintiff braked and swerved to the right. (Ex. E, pp. 69-70). She hit something, although she did not know at that time what she had hit. (Ex. E, p. 70). The plaintiff had struck the tractor which was being operated by David Cavanaugh. (Ex. D, plaintiffs' Complaint, paragraph 10).

The accident was investigated by the Washtenaw County Sheriff's Department. In the narrative portion, Corporal Hill, relying on statements from the plaintiff and David Cavanaugh, wrote that visibility had dropped to zero as a large dust cloud enveloped the area. (Ex. A).

The plaintiffs filed their Complaint against David Cavanaugh and the Washtenaw County Road Commission in May, 1997. (Ex. D). In Paragraph 14 they alleged that defendant Cavanaugh had a duty to use due care and caution in his operation and control of the tractor owned by defendant Washtenaw County Road Commission, and to obey the motor vehicle code of the State of Michigan and the rules of the common law. In paragraph 15, they alleged that David Cavanaugh was negligent in that he breached those duties.

In paragraph 16 (mistakenly numbered as paragraph 15), the plaintiffs alleged that defendant Washtenaw County Road Commission had a duty to "entrust the vehicle titled in its name to a reasonably prudent person who would drive with both due and reasonable care under all the circumstances." They allege that the Road Commission breached those duties. They claim in particular that the Road Commission permitted David Cavanaugh to operate the motor vehicle on a "blustery, windy day" and failed to provide a water truck to hose down the dust and debris stirred up by the tractor. (Ex. D).

B. <u>The facts in the Zelanko case</u>

On September 12, 1996, Road Commission employee Richard Shehan was driving a Road Commission tractor with a side mounted mower. (Ex. C: photos of tractor and mower, attached as Exhibit F to this Brief). Mr. Shehan was cutting grass on the south side of eastbound I-94. (Ex. D: dep of Richard Shehan). At one point, Mr. Shehan went over a piece of tire, which the mower then threw toward oncoming eastbound I-94 traffic. (Ex. A; Ex. D).

The plaintiff, Leonard Zelanko, was in the course of his employment driving a semi eastbound on I-94. The piece of tire struck his windshield as he passed. (Ex. A; Ex. E: photographs of truck; Ex. F: plaintiff's Complaint, paragraphs 6-7). Mr. Zelanko was able to bring his vehicle to a stop on the shoulder of the highway. (Ex. D).

Mr. Shehan did not see the tire before his mower went over it, nor did he hear the mower hit the tire. He saw Mr. Zelanko pull over to the right shoulder. When he went over to see if Mr. Zelanko needed any help, he noted the damaged windshield and realized what had happened. (Ex. D).

William Engelbert is the state trunkline foreman for the Washtenaw County Road Commission. He testified that the Washtenaw County Road Commission mows grass at least two time per year pursuant to a contract with the Michigan Department of Transportation. (Ex. G: dep of William Engelbert). He testified that there is no set schedule for roadside cleanup. That activity is performed on an "as-needed" basis. In the course of his daily driving of the state roads, he determines if cleanup is needed. (Ex. G). In addition, he learns of debris on or near the roadside from the motoring public and he checks out the situation when he receives a message of that sort. Also, the "Adopt-A-Highway" program performs cleanup, beside the cleanup performed by his crew. (Ex. G). Mr. Engelbert offered a 1996 flier from the "Adopt-A-Highway" program, which indicated there would be three cleanups for that mowing season. (Ex. H).

Mr. Shehan contacted Mr. Engelbert after the accident. Mr. Engelbert went to the scene and took three Polaroid photographs of the Zelanko vehicle. Mr. Engelbert also examined the mower, to determine whether it was equipped with all of its guards. It was. (Ex. D; Ex. E; and Ex. G). Mr. Engelbert testified that recap and retread tires fall from passing semi trucks, and that they are a constant problem. He said that at times the entire retread detaches, while smaller pieces detach on other occasions. He said there is absolutely no way of predicting when either of those things might happen. (Ex. G).

Mr. Zelanko filed his Complaint against the Washtenaw County Road Commission and Richard Shehan in July, 1998. (Ex. F) In paragraph 9 of that Complaint he alleged that Mr. Shehan owed a duty to operate the tractor and attached lawn mower in a careful and prudent manner in accordance with the statutes of the State of Michigan. In paragraph 10 he claimed that defendant Shehan breached those duties. Subparagraphs 10d and 10e contained his specific factual allegations. He alleged that Shehan was negligent for failing to avoid driving over the piece of rubber and/or other debris when he knew or should have known that the failure to do so would naturally and probably result in injury to him. He claimed also that Mr. Shehan failed to exercise reasonable and ordinary care to keep a sharp lookout so as to avoid injuring him.

Complaint paragraph 12 alleged that the Road Commission was liable, because Shehan had been operating the tractor and attached lawn mower with its express or implied knowledge and consent. In paragraph 13, the plaintiff alleged that the Road Commission was liable for the negligent entrustment of the tractor and attached lawn mower to defendant Shehan, when it knew or should have known that he was incompetent or unqualified to operate it.

ARGUMENT

I. GIVEN THE SUPREME COURT'S ANALYSIS IN CHANDLER V MUSKEGON COUNTY, THESE PLAINTIFFS' CLAIMS DO NOT FALL WITHIN THE MOTOR VEHICLE EXCEPTION TO GOVERNMENTAL IMMUNITY

The plaintiff in the Zelanko case complains about the Road Commission's tractor/mower throwing a piece of truck tire retread into his windshield as he passed on the highway. Plaintiff's supplemental brief to the Court of Appeals characterized his allegations of negligence as follows:

> Plaintiff does not allege that defendant's employee, Shehan was negligent in cutting grass, but in operating the motor vehicle so as to run over/and fail to avoid the large shred of recapped tire, thereby jettisoning it directly toward Mr. Zelanko's truck, where it shattered his windshield, and resulted in his post-accident disability. ...(Plaintiff's Supplemental Brief, p. 2)

Plaintiff claims that proper performance of the mowing activity required the operator to observe debris, stop the tractor, and to move the debris out of the way before mowing that area. (Plaintiff's Supplemental Brief, p. 2). Surely Mr. Shehan could not have fulfilled his grass mowing task by simply dodging around areas containing debris. Consequently, plaintiff's complaint is this and this alone; that Mr. Shehan failed to stop his tractor, dismount, remove the debris, and then proceed. In short, plaintiff contends Mr. Shehan was negligent for failing to clear debris from the path of his mower.

The Regan case likewise involved a tractor, that one equipped with a rotating broom on the front of it. Plaintiff claims that the Road Commission was negligent there for sweeping the roadway during dry, windy conditions.

Are plaintiffs' complaints about "negligent operation of a motor vehicle?" The Supreme Court has now defined and clarified that phrase in Chandler v Muskegon County, 467 Mich 315; 652 NW2d 224 (2002) The Court's application of the Chandler analysis in this case will show that these plaintiffs' negligence claims fall outside the Motor Vehicle Exception.

Chandler was injured in his attempt to free a bus driver from the doors of a county owned bus. The driver had just taken the bus into the garage where he parked it, turned off the engine, and started to exit through the open bus doors. He neglected to release the hydraulic air pressure valve, and the doors closed on his neck. That did not produce the injury in question in the lawsuit. Rather, a bus cleaning worker observed the driver's predicament. He attempted to pry open the doors and to hold them until someone could reach through the bus window and release the air valve. Indeed, it was this fellow who suffered injury to his shoulder, and who brought action against the county.

The county asserted governmental immunity, but plaintiff contended his claim fell within the exception for negligent operation of a motor vehicle. The Supreme Court disagreed with the plaintiff and held that the Motor Vehicle Exception does not apply. The Court looked to the definition of "operation" as used in the statute. It said:

> The legislature has not defined "operation" for the purpose of MCL§691.1405. Where a non-technical undefined word is used in the statute, the legislature has directed that the term should be "construed and understood according to the common and approved usage of the language..." MCL§8.3a, See also Stanton v Battle Creek, 466 Mich 611, 647 NW2d 508 (2002). As might be expected in undertaking to give meaning to words this Court has often consulted dictionaries. Hollis v City of Pontiac 456 Mich 744, 756; 575 NW2d 762 (1998). The Random House Webster's College Dictionary (1997) defines "operation" as "an act or instance, process or manner of functioning or operating. We conclude, in accordance with this definition, and in accordance with the narrow construction given to the exceptions to governmental immunity, that the language "operation of a motor vehicle" means that the motor vehicle is being operated *as* a motor vehicle (Chandler, 319-320).

The Court went on to say:

> Accordingly, aware that we are considering the dictionary definition of the word "operation" as well as construing a governmental immunity statute, which we must construe narrowly, we conclude that the "operation of a motor vehicle" encompasses activities that are directly associated with the driving of a motor vehicle... (Chandler, 321).

The Court ultimately concluded as follows:

> In the context of a motor vehicle, the common usage of the term "operation" refers to the ordinary use of the vehicle *as* a motor vehicle, namely driving the vehicle. In this case, the injury to the plaintiff did not arise from the negligent operation of the bus as a motor vehicle. The plaintiff was not injured incident to the vehicle's operation as a motor vehicle. Rather, the vehicle was parked in a maintenance facility for the purpose of maintenance and was not at the time being operated *as* a motor vehicle. (Chandler, 321-322).

The activities about which the plaintiffs complain in these cases are grass mowing and sweeping. Moreover, the tractor/mower and the broom sweeper were not at the time "being operated *as* ... motor vehicle[s]." They were being operated as a mower in one case and as a sweeper in the other. Sweeping and mowing grass are not an activities directly associated with driving or operating a motor vehicle *as* a motor vehicle.

In summary, there can be no question about these cases following the Supreme Court's Chandler decision. These plaintiffs are not complaining about an activity directly associated with driving a motor vehicle. Plaintiffs are complaining about the manner in which the defendant was mowing grass and sweeping. Those claims does not come within "operation of a motor vehicle" as defined by the Chandler decision.

II. NEITHER THE TRACTOR/MOWER NOR THE BROOM SWEEPER TRACTOR ARE "MOTOR VEHICLES" WITHIN THE MEANING OF THE MOTOR VEHICLE EXCEPTION, AS DEFINED BY THIS COURT IN STANTON.

In Stanton v City of Battle Creek, 46 Mich 611; 647 NW2d 508 (2002), the plaintiff claimed the City should be liable for injury arising out of negligent operation and maintenance of a hi-lo. The City claimed immunity, and the plaintiff claimed exception for negligent operation of a motor vehicle. This Court held that the hi-lo was not a "motor vehicle" within the meaning of the Motor Vehicle Exception.

When this Court decided that the forklift was not a "motor vehicle," it took that opportunity to give definitive meaning to the term "motor vehicle" as it is used in the Motor Vehicle Exception. The

Court said that since the statute does not provide a definition, the Court must give the term its plain and ordinary meaning. For that, as in other cases, the Court looked to dictionary definitions.

Application of the Stanton definition to these cases leads readily to one conclusion. The tractor mower is not a "motor vehicle" for the Motor Vehicle Exception. Likewise, the broom tractor is not a "motor vehicle." Neither is similar to an automobile, truck, or bus. Moreover, neither of them is a "conveyance" in the sense of an automobile, truck, or bus. To fully understand the definition given in Stanton, one must look to the similarity among automobiles, trucks, and buses, to determine what other sort of vehicle would be similar to them. The similarity is immediately apparent. All are used for transporting passengers or things on the streets and highways; that is, to get those persons or things from one place to another. All are, in that sense, "conveyances," that being a particularly operative term within the definition.

Neither the tractor/mower nor the broom sweeper tractor in these cases are "conveyances" similar to an automobile, truck, or bus. Neither had the purpose for transporting people or things from one place to another over the streets and highways. One had the purpose to cut grass. The other had the purpose to sweep dirt, sand and gravel off the roadway. Even if they were to be driven on the street from one location to another, that would not be similar to the use that is made of a truck, or a bus, or an automobile. Both of these tractors are, like the hi-lo, pieces of equipment with a particular use that is not associated with transportation of people or things. To the extent that either of them might be moved on the street, the only reason for doing so would be to change their location of use, or, in the case of the sweeper, to sweep the street. Neither would be moved on the roadway to transport or convey anything. They simply are not conveyances similar to automobiles, trucks or buses.

In summary, then, the tractor mower and the broom sweeper tractor at issue in these cases are, without any question, not "motor vehicles" as defined by Stanton. These cases should therefore be

dismissed, since the Motor Vehicle Exception does not apply, and since the defendant is therefore entitled to governmental immunity.

III. FINALLY, THE CHANDLER AND STANTON DECISIONS MUST BE READ TOGETHER BECAUSE STANTON'S DEFINITION OF "MOTOR VEHICLE" MAKES CLEAR THAT THESE PLAINTIFFS' COMPLAINTS DO NOT INVOLVE OPERATION OF A MOTOR VEHICLE "*AS* A MOTOR VEHICLE" WITHIN THE MEANING OF CHANDLER.

In truth, the two issues discussed above are not all that separate. This Court concluded in Chandler that "operation" of a motor vehicle means a motor vehicle being operated "*as*" a motor vehicle. That, in turn, means a complaint is not about "operation of a motor vehicle" when it arises out of the use of a motor vehicle for some other purpose than as a "motor vehicle" (defined as an automobile, truck, bus, or similar motor driven conveyance).

As an example, a truck is clearly within the definition of "motor vehicle". If it is being used, however, to pull stumps out of the ground, it is not being used "*as* a motor vehicle." In that context, it is not being used as a conveyance for people or things on the streets or highways. Though it is a truck, it is not being used as a truck. According to the Chandler decision, then, any complaint about negligent stump pulling would not fall within the Motor Vehicle Exception. Plaintiff would not be complaining about the "operation of a motor vehicle," because plaintiff's complaint would not be about the use of the truck as a truck.

Stanton's definition of "motor vehicle" makes it very clear in these cases that the plaintiffs are not complaining about "operation of ... motor vehicle[s]." Even if the Court should find that these tractors are "motor vehicles", plaintiffs are not complaining about their use "*as* ... motor vehicle[s]". These plaintiffs complain about their use as pieces of equipment, a mower in one case and a sweeper in the other. Their use in that manner is not in any way similar to the use of an automobile, truck, or bus, as a conveyance.

Reading Chandler together with Stanton, the conclusion is inescapable. Neither of plaintiffs' complaints involve "operation of a motor vehicle." One plaintiff complains about the use of the tractor mower as a mower, and that is not a complaint involving the operation of a motor vehicle "as a motor vehicle.". The same is true about the broom sweeper. Plaintiff there complains about its use as a sweeper, not about its use "as a motor vehicle" in the manner of an automobile, truck or bus.

The Motor Vehicle Exception simply does not apply, and the defendant is entitled to governmental immunity. The Court of Appeals has erred by holding otherwise. The Supreme Court must reverse that decision, not only to reach the right result here, but also to remove the binding precedent of the Court of Appeals decision. Until this Court does so, the Court of Appeals decision will minimize Chandler and Stanton almost to the point of irrelevance.

RELIEF REQUESTED

For all of the foregoing reasons and authorities, Defendant Washtenaw County Road Commission respectfully requests that the Court grant its Application for Leave to Appeal, and that the Court reverse the decision of the Court of Appeals for the reason that the plaintiffs' claims in these cases are barred by governmental immunity.

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